CHOP CHIN LIONG v. BAN HOE HIN

[C. A. (Mathew C.J., Wilson and Abbott JJ.) October 19, 1955]

[Penang — F.M. Civil Appeal No. 4 of 1955]

Sale of Goods — Breach of contract — Quantum of damages.

In this case the plaintiffs-respondents bought from the defendants-appellants 500 bags of mixed Java beans for $9,900.84. The plaintiffs-respondents said that at the time of the sale, they made known to the defendants-appellants that the beans were bought for the purpose of being sold by them as pig fodder. The plaintiffs-respondents in fact resold the 500 bags of beans for $12,486.62 to Chop Lean Hin of Penang, who in turn resold part of the consignment to retail fodder dealers and the beans were eventually resold to pig rearers. Twenty-one of the pigs who ate part of the beans died. The plaintiffs-respondents having paid to the defendants-appellants the sum of $9,900.84 claimed as damages $12,486.62 which Chop Lean Hin had agreed to pay for their beans. At the trial, the only point argued was whether or not the defendants-appellants were liable. No argument was addressed on the quantum of damages, assuming that they were liable. In the Court of Appeal liability was admitted and the appeal was confined to the question of the amount of damages which could be claimed. It was argued that the plaintiffs-respondents took no steps to mitigate the damage.

Held: there was nothing in this case to show that the trial Judge acted upon any wrong principle of law or that the amount awarded was so extremely high as to make it an entirely erroneous estimate of the damage to which the plaintiffs-respondents were entitled, and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Flint v. Lovell* (1935) 1 K.B. 354.

(2) *G. C. Dobell & Co. Ltd. v. Barber & Garratt* (1931) 1 K.B. 219.

COURT OF APPEAL.

C. O. Lim for the appellants.

R. D. Hume for the respondents.

Wilson J. (with whom **Mathew C.J.** and **Abbott J.** agreed) : — The respondents bought from the appellants on the 19th April, 1951, 500 bags of mixed Java beans for $9,900.84. This was admitted by the appellants in their statement of defence. In the statement of claim the respondents (then plaintiffs) alleged that at the time of the sale the plaintiffs made known to the defendants that the beans were bought for the purpose of being sold by the plaintiffs as pig fodder. There is conclusive evidence that this was the fact, and there is the evidence of Mr. Oh Deng Jit that the respondents' business is that of importers and exporters. This was evidence called on behalf of the defence and it is clear that the appellants knew that the respondents were not pig keepers and that they must have known that it was the intention of the respondents to resell the beans as pig fodder to sub-purchasers. In fact, the respondents resold the 500 bags of beans to Chop Lean Hin, Penang, for the sum of $12,486.62. Chop Lean Hin resold part of the consignment to retail fodder dealers who, in their turn, resold to pig rearers. Twenty-one of the pigs who ate part of the beans died. The respondents, having paid to the appellants the said sum of $9,900.84, claimed as damages $12,486.62 which Chop Lean Hin had agreed to pay for their beans. The latter had, in fact, paid $4,150 on account and they have instituted proceedings against the respondents to recover that sum of money.

The only point argued before the trial Judge was as to whether or not the defendants at the trial were liable. Not one word of argument was addressed to the question of the quantum of damages, assuming that they were liable. In this Court liability has been admitted and the appeal has been confined to the question of the amount of damages which can be claimed.

It has been argued on appeal that the respondents took no steps to mitigate the damage. After the death of these pigs the Chief Sanitary Inspector, Penang, on receiving a report from the Veterinary Officer, seized all the beans they could find, in other words, 499 bags, and destroyed them by burning. The Chief Sanitary Inspector in cross-examination admitted that section 4 of the Sale of Food and Drugs Ordinance of the Straits Settlements (Cap. 191) applies only to food for human consumption, and it was suggested that the respondents should have objected to this destruction of these beans. In my view, that is quite immaterial for two reasons, because on the evidence of the Horticultural Officer, Penang, called for the defence these beans can be used for human consumption, and because of the Government Chemist's analysis. As the beans, in the condition in which they were sold, were clearly not fit for pig consumption, I do not think it matters whether or not they were lawfully destroyed by the Sanitary Inspector or not, although I think they were lawfully destroyed, as I am of opinion that the beans had no value at the time of sale.

The next point taken in regard to mitigation is that the respondents have received from Chop Lean Hin the sum of $4,150 for the beans which they purchased and that having been sued for the return of the amount it is their duty to resist such claim and that if they did so successfully they could not claim a similar amount from the appellants as damages. On the facts as disclosed in the evidence, it seems to me quite unreasonable to expect the respondents to resist the claim of Chop Lean Hin.

In the case of *Flint v. Lovell*[1] Greer L.J. stated as follows :—

"In order to justify reversing the trial judge on the question of the amount of damages it will generally be

necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

In the case of *G. C. Dobell & Co. Ltd. v. Barber & Garratt*[2], it was held by Scrutton and Lawrence L.JJ. that the plaintiffs in an action for breach of statutory warranty were entitled to include in their damages the amounts they were liable to pay to their sub-purchasers.

Mr. Lim has suggested that at the close of the case before the trial Judge there should have been a further hearing to determine the amount of the damages. I cannot think why, and the suggestion appears to me to be fantastic. The plaintiffs claim $12,486.62, and although the defendants in their written defence stated that they did not admit various allegations contained in the statement of claim, they did not specifically deny that the plaintiffs were entitled to the amount of the claim and, as I have already stated, no argument was put before the learned trial Judge in regard to the amount of damages to which the plaintiffs were entitled.

The measure of damages, in my opinion, is laid down in section 53, sub-section (3) of the Sale of Goods Act, 1893, and that is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they answered to the warranty. In my view, the beans at the time they were delivered to the respondents had no value. I think the beans were undoubtedly poisonous, both for pigs and for human consumption. The statement made to the respondents that the beans were good for pig fodder meant that they were good in the condition that they were sold and, in my view, there was no obligation upon the respondents to make exhaustive enquiries as to whether the beans could be made good for pig fodder or human consumption if treated in a certain way. There is no evidence that this was generally known in Penang. It may be that if exhaustive enquiries were made it would be found that even in their condition as delivered they might have been used for some purpose and might have had some value. It was suggested in evidence that the indigestible portion of the beans is valuable as manure. That is the evidence of an expert, the Settlement Agricultural Officer, Penang. He did not say that the beans would have any value as manure in Penang, or were saleable as such.

I would dismiss this appeal with costs.

Appeal dismissed.

Solicitors : *Hogan, Adams & Allan; Lim, Lim & Oon.*

M. RAMAN v. AYAVOO

[A. Cr. J. (Rigby J.) July 25, 1956]

[Penang — Criminal Appeal No. 2 of 1956]

Criminal Procedure Code (S.S. Cap. 21), s. 295 — Plea of autrefois convict — Whether conviction on a charge of disorderly behaviour in public a bar to a charge of voluntarily causing hurt.

This was an appeal against the conviction of the accused on a charge of voluntarily causing hurt. The substantial ground of appeal was one of *autrefois convict*. It appeared that some two months previously, both the complainant and the appellant, on the very facts which gave rise to the charge in the summons for voluntarily causing hurt, were jointly charged under section 21 of the Minor Offences Ordinance, with disorderly behaviour in a public place.

Held: (1) it is not enough on a plea of *autrefois convict* to say that the evidence rendered on the second charge was the same as that offered to prove the first charge. It is not the evidence which is essential to the charge that governs the plea but the offence which is charged;

(2) the offence of voluntarily causing hurt is a different offence and a more serious offence than the simple charge of disorderly behaviour in public and a conviction on the original charge of disorderly behaviour would not necessarily involve a conviction on the latter charge of voluntarily causing hurt;

(3) the plea of *autrefois convict* therefore has no substance and must be dismissed.

Cases referred to :—

(1) *R. v. Kendrick & Smith* 23 Cr. App. R. 1.

(2) *Public Prosecutor v. Surjan Singh* (1939) M.L.J. 109.

MAGISTRATE'S CRIMINAL APPEAL.

M. Abraham for the appellant.

Chew Choon Poon for the respondent.

Rigby J. : — The appellant in this case pleaded guilty to a private Summons preferred against him by the complainant charging him with assault contrary to section 323 of the Penal Code.

He was fined $25, ordered to pay $50 compensation to the complainant, and bound over to keep the peace for six months.

It would appear that some two months previously both the complainant and the appellant, on the very facts which gave rise to the charge in the private Summons to which the appellant pleaded guilty, were jointly charged under section 21 of the Minor Offences Ordinance, with disorderly behaviour in a public place. The evidence advanced in support of that charge was simply that they were both seen fighting together in a public place. The record of that case, which I have now had an opportunity of perusing, is unsatisfactory and I have, by way of revision proceedings, quashed the order made thereon. However, I propose to consider the appeal now before me on the basis that the appellant